



Comptroller General
of the United States

Washington, D.C. 20548

K/S 420

Decision

Matter of: Integrated Systems Group, Inc.

File: B-246094

Date: January 13, 1992

Stephen L. Mills, Integrated Systems Group, Inc., for the protester.

Leonard Schoen, Esq., Assistant Counsel, for the agency.
James Vickers, Esq. and Jerold D. Cohen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGESTS

1. Contracting agency acted reasonably in evaluating the protester's offer based on \$315 per hour for a mandatory service, notwithstanding that the firm, which did not price the service in its best and final offer, says it intended to provide the service at no charge. The solicitation required an entry of "N/C" if a firm intended no charge for a mandatory item, and the offeror (1) had indicated in its initial proposal that the "prevailing price" for the service was \$315 per hour; and (2) had submitted a second table that appeared to confirm the \$315 figure.

2. Where agency reasonably evaluated best and final offer (BAFO) with respect to the charge for a mandatory service for which the firm failed to specify a price in the BAFO, based on pricing information contained in the initial offer and provided in discussions, the offeror had no legal right to a reopening of negotiations to further explain its pricing.

DECISION

Integrated Systems Group, Inc. (ISG), protests the evaluation of its proposal submitted in response to request for proposals (RFP) No. DLAH00-91-R-0001, issued by the Defense Logistics Agency (DLA). We deny the protest.

The RFP was for a magnetic tape cartridge subsystem and associated maintenance. The issue raised in the protest concerns the evaluation of ISG's maintenance charges. The RFP, at paragraph C.11a, provided:

"a. The contractor shall provide maintenance 24 hours a day, seven days a week. The basic Principal Period of Maintenance (PPM) shall be any consecutive nine hours between the hours of 06:00 AM to 06:00 PM local time, five days a week, Monday through Friday, excluding Government holidays. The Outside the Principal Period of Maintenance (OPPM) shall be other than those hours designated as PPM. . . ."

The contractor was to provide maintenance during the PPM at a fixed monthly rate; maintenance performed during the OPPM was to be priced at an hourly rate. The RFP included several price tables that were to be completed by the offeror, including Table B-3 which was to contain the hourly rate for OPPM plus separate rates for weekends and holidays if the offeror desired.

In its initial proposal, ISG acknowledged that maintenance was required on a 24-hour basis, 7 days a week, covering both PPM and OPPM, and that OPPM charges were to be at an hourly rate. ISG also stated in its proposal that maintenance for malfunctions caused by other than normal wear and tear would be charged at "the prevailing OPPM rate (\$315 per hour . . .) for the service call." ISG did not complete the RFP's price tables, including Table B-3, and instead submitted its own computer-generated tables. ISG's tables did not include a price for OPPM.

ISG was informed during discussions that it needed to address OPPM, and subsequently completed and returned Table B-3 indicating a charge of \$315 per hour for OPPM performed Monday through Friday. For weekends and holidays, ISG inserted "N/A" in the spaces provided for a price.

During further discussions with ISG, DLA advised the firm that its proposal was not clear because of the use of "N/A" in the pricing table, and requested ISG to complete the table. The next day, ISG submitted another Table B-3, in which it offered the same price, \$315, for weekends and holidays that it had for Monday through Friday. In its best and final offer (BAFO), ISG did not state a price for OPPM, nor did it resubmit a completed Table B-3. DLA evaluated ISG's BAFO using the \$315 rate.

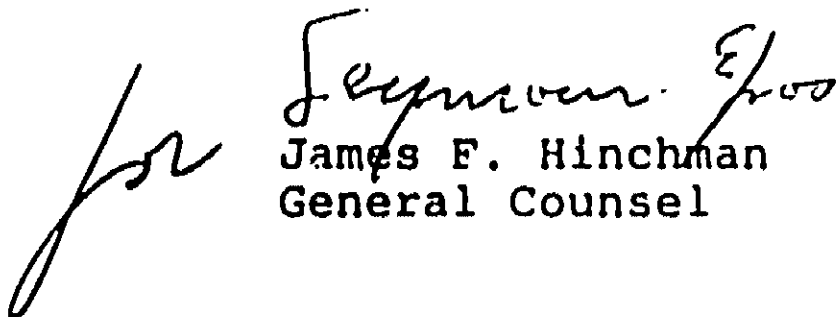
ISG protested the evaluation of its proposal, following award to Federal Systems Group, Inc. ISG contends that its proposal was based on "no cost" to the government for OPPM since it was proposing PPM on a 24-hour, 7-days-a-week basis and, therefore, there would be no hours outside the PPM. ISG consequently objects to the government's evaluation of its proposal at an OPPM rate of \$315 per hour, and contends that it would have been the lowest priced offeror if the evaluation had been proper.

We see no basis to question DLA's decision not to evaluate the OPPM component of ISG's proposal at no charge to the government. The RFP, at section B.3.1, advised offerors that all mandatory items offered were to be listed in the unit price tables, and if there were no price associated with an item the notation "N/C" (no charge) was to be inserted. Further, DLA repeatedly brought to ISG's attention the need for the submission of a properly completed Table B-3. We have reviewed ISG's proposal, modifications, and BAFO, and nowhere do we find a statement by the firm that it was offering OPPM under its fixed monthly rate for PPM, i.e., at no charge.

At the time it evaluated BAFOs, DLA had on record an ISG reference in its initial proposal to a "prevailing OPPM rate" of \$315 per hour, and a later-furnished Table B-3 that appeared to offer the service at that same price. We see nothing improper in DLA's evaluation of the protester's offer on that basis.

ISG also argues that following receipt of BAFOs DLA should have contacted the firm for a clarification of its proposal with respect to OPPM. We do not agree that DLA had to do so. As stated above, we think the agency acted reasonably in evaluating ISG's offer based on an hourly OPPM rate of \$315. The contact ISG urges would have constituted discussions with the firm, since the information would have affected ISG's price, and thus would have required a reopening of negotiations with all the other offerors. See FCC.O&M, Inc., B-238610.2, July 20, 1990, 91-1 CPD ¶ 26. It is within the discretion of the contracting officer to determine when the negotiation and offer stage of a procurement is finished; an offeror has no legal right to insist that negotiations be reopened after BAFOs have been submitted. See Reinhold Industries, B-236892.2, Jan. 30, 1991, 91-1 CPD ¶ 85.

The protest is denied.


James F. Hinchman
General Counsel